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Council/Agency Meeting Held: _____	CITY CLERK CITY OF HUNTINGTON BEACH
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	City Clerk's Signature _____
Council Meeting Date: 11/7/2005	Department ID Number: ED 05-34

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

PREPARED BY: STANLEY SMALEWITZ, DIRECTOR OF ECONOMIC
DEVELOPMENT *Stanley Smalewitz*

Robert F. Beardsley
ROBERT F. BEARDSLEY, DIRECTOR OF PUBLIC WORKS

SUBJECT: Approve the Garfield & Delaware Intersection Improvement
Project Land Purchase (19002 Delaware)

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: An agreement in the amount of \$735,000 with Esther Contreras for the purchase of her real property at 19002 Delaware Street (southeast corner of Garfield and Delaware) is submitted for approval. Acquisition of this property is necessary to complete improvements to the Garfield and Delaware intersection.

Funding Source: Funds in the amount of \$735,000 are budgeted in the Traffic Impact Fund, Street Widening, Land Purchase, Account No. 200690001.81100. Reimbursement in the amount of \$600,000 will be requested from OCTA Growth Management Area (GMA) #6 upon completion of the acquisition.

Recommended Action: Motion to:

1. Approve the Agreement for Purchase and Sale of Real Property and Escrow Instructions in the amount of \$735,000 between the City of Huntington Beach and Esther Contreras for the real property located at 19002 Delaware Street.
2. Authorize execution of the agreement by the Mayor and City Clerk.

Alternative Action(s): Do not approve the purchase agreement for 19002 Delaware Street and direct staff to renegotiate the acquisition terms with Esther Contreras.

Analysis: A project to widen the intersection of Garfield Avenue and Delaware Street has been budgeted in Fiscal Year 2005/06. The widening is required to conform to the General Plan. The intersection improvement project includes the construction of curbs, gutters, sidewalk, pavement restoration, and relocation of traffic signals and street lights as necessary to enhance pedestrian, bicycle, traffic circulation, and public safety.

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REQUEST FOR ACTION

MEETING DATE: 11/7/2005

DEPARTMENT ID NUMBER:ED 05-34

The subject property is one of five parcels required for this project. Offers to purchase have been made to the other real property owners by the City, but these other offers have not yet been accepted. At such time as the remaining real property purchase offers are accepted, those agreements will be submitted for Council approval. The amounts of all offers to purchase made by the City for this project are consistent with real estate market values as described in appraisal reports provided by Netzer and Associates dated May 16, 2005.

Construction is scheduled for late in the current fiscal year, however, will be dependent upon the property acquisition schedule. Grant funds totaling \$1.2 million for the right-of-way and construction have been awarded through the OCTA GMA #6. The balance of funding will be provided with Traffic Impact Fee funds.

Environmental Status: N/A

Attachment(s):

City Clerk's Page Number	No.	Description
	1.	Agreement for Purchase and Sale of Real Property and Escrow Instructions between the City of Huntington Beach and Esther Contreras for the real property located at 19002 Delaware Street
	2.	Site Map

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**Agreement for the Purchase and Sale of Real Property and
Escrow Instructions for 19002 Delaware Street**

ATTACHMENT #1

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**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND ESCROW INSTRUCTIONS**

Escrow No. _____

To:

Attn:

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW INSTRUCTIONS (this "Agreement") is made by and between THE CITY OF HUNTINGTON BEACH, a California municipal corporation ("Buyer"), and ESTHER CONTRERAS, Trustee of the CONTRERAS TRUST dated April 15, 1998 ("Seller").

- A. Seller is the owner of an undivided 100/100th interest in that certain portion of the improved parcel of real property located at 19002 Delaware Street (A.P.N. 159-151-15) in the City of Huntington Beach, County of Orange, State of California, including all buildings and improvements located thereon, as more particularly described in Exhibit A attached to this Agreement (the "Property"):

SEE EXHIBIT "A"

- B. Prior to the execution of this Agreement, Seller accepted Buyer's written offer to acquire the Seller's undivided interest in the Property for the purposes of street widening and related improvements ("Project").

NOW, THEREFORE, the parties to this Agreement agree to transfer fee simple title to Seller's undivided interest in the Property, from Seller to Buyer, in accordance with the following terms and conditions:

ARTICLE

TERMS AND CONDITIONS

- 1.1 Purchase and Sale of Seller's Undivided Interest in the Property. In its written settlement offer, Buyer represented to Seller that, according to Buyer's calculations, Seller owned an undivided 100/100th interest in the Property. However, it is the mutual intent of the parties that, pursuant to the terms of this Agreement, Seller conveys to Buyer, and Buyer acquires from Seller, in fee simple, title to all interest Seller may have had or currently holds and owns in the Property.
- 1.2 Opening of Escrow. Within ten (10) business days after the execution of this Agreement by Seller and Buyer, the parties shall open an escrow ("Escrow") with the Escrow holder by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that Buyer delivers a fully executed Agreement to Escrow Holder.

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1.3 Payment of Purchase Price.

(a) Amount of Purchase Price. The purchase price for the conveyance and transfer of Seller's undivided interest in the Property to Buyer shall be Seven Hundred Thirty Five Thousand Dollars (\$735,000.00) ("Purchase Price").

(b) Payment of Purchase Price. The Purchase Price shall be deposited by Buyer into Escrow within fifteen (15) business days following the receipt of the Estimated Closing Statement. Buyer shall deposit the Purchase Price with Escrow Holder in "good funds" payable to Seller at the time of closing. "Good funds" shall mean a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California, check from the City of Huntington Beach, or cash.

(c) Interests Conveyed. It is understood and agreed by and between Buyer and Seller that the Purchase Price set forth above is paid as full and final consideration of all of the following:

- (i) A fee simple interest in and to the Property, for the purposes of street widening and related improvements, including all uses incident to the use of the Property as a public right of way, including but not limited to the placement of utilities on or over the Property, access ways for vehicular and pedestrian access, bus bays, signage, curbs, gutters, drainage facilities, traffic control devices or other roadway improvements; and
- (ii) All improvements, structures, landscaping, paving and any appurtenances to the Property, including but limited to any oil production facilities located on the Property.

(d) Other Interests Included. Payment of the Purchase Price by Buyer to Seller represents total just compensation for Buyer's acquisition of Seller's undivided interest in the Property, all damages for lost oil production or other economic damages due to interruptions of sewer, water, and electrical utility services, pre-condemnation damages, interest, attorney's fees or other litigation expenses, and any and all items of compensation or damage arising out of the planning, negotiation, and acquisition by the Buyer of Seller's undivided interest in the Property.

1.4 Additional Funds and Documents Required from Buyer and Seller.

(a) Buyer. Before 12:00 noon on the date preceding the Closing Date, Buyer shall deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to close escrow and otherwise comply with the terms of this Agreement.

(b) Seller. Within twenty (20) business days following the date that Escrow is opened hereunder, Seller will deposit with Escrow Holder an executed Grant Deed ("Grant Deed") conveying a fee simple title to Seller's undivided interest in the Property, together

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with such funds and other instruments as may be necessary in order for the Escrow Holder to comply with this Agreement. Escrow Holder shall submit the executed Grant Deed to Buyer for review and acceptance, as may be required to put the Grant Deed in recordable form, whereupon Buyer shall immediately submit the Grant Deed, with the acceptance, to Escrow Holder pending close of Escrow.

1.5 Closing Date: Time of Essence.

(a) Closing Date. Unless otherwise terminated by Buyer as provided below, Escrow shall close within ninety (90) days from the date Escrow is opened. The terms "the Close of Escrow", and/or the "Closing" as used herein shall mean the time Seller's Grant Deed is filed for recording by the Escrow Holder in the Office of the County Recorder of Orange County, California, the Title Company has issued the Title Policy provided for in subsection (c) below, all closing costs and other costs are paid in full, and all disbursements of any remaining funds in Escrow, or other disbursements as may be required to close Escrow, are made by Escrow Holder to the appropriate parties.

(b) Time of Essence. Buyer and Seller specifically understand and agree that time is of the essence and Buyer and Sellers specifically agree to strictly comply and perform their obligations herein in the time and manner specified, and waive any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement. The time for Closing may be extended, but only by way of a writing signed by all parties.

(c) Title Policy. Upon Seller's deposit of the Grant Deed in favor of Buyer in recordable condition covering Seller's undivided interest in the Property, and prior to Close of Escrow, Escrow Holder shall cause to be issued and delivered to Buyer as of the Closing a C.L.T.A. standard coverage policy of title insurance ("Title Policy") issued by Chicago Title Company ("Title Company"), with liability in the amount of the Purchase Price, covering the Property and reflecting the fee simple title to Seller's undivided interest in the Property in favor of Buyer free of encumbrances; except:

- (i) The standard printed exceptions and exclusions contained in the CLTA form policy; and
- (ii) Any exceptions created by or consented to in writing by Buyer, including without limitation, any exceptions arising by reason of Buyer's filing of an eminent domain action, or securing of an order for possession of or entry on the Property.

1.6 Conditions Precedent To Close Of Escrow.

(a) Condition to Buyer's Obligations. The obligations of Buyer under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

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- (i) Issuance by Title Company of the Title Policy reflecting a fee simple undivided interest in the Property granted to Buyer.
- (ii) Deposit by Seller of all instruments and funds provided for in this Agreement, necessary to the Closing.

(b) Conditions to Seller's Obligations. The obligations of the Seller under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by the Seller of each of the following conditions precedent:

- (i) Delivery by Buyer of all instruments and funds provided for in this Agreement necessary to the Closing.

1.7 Escrow Provisions.

a) Escrow Instructions. This Agreement, when signed by Buyer and Seller, shall also constitute escrow instructions to escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail.

(b) General Escrow Provisions. Upon Close of Escrow, Escrow Holder shall deliver the Title Policy to Buyer and instruct the County Recorder of Orange County, California to mail the recorded Grant Deed, to Buyer at the address set forth in Section 3.2 after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Orange County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be made by Escrow Holder's check.

1.8 Amendments and Counterparts. This Agreement and any modifications, amendments, or supplements thereto may be executed in counterparts and shall be valid and binding as if all of the parties' signatures were on one document.

1.9 Payment of Costs. Buyer shall pay Buyer's and Seller's Escrow fees, any premium charges for the Title Policy, the charge for drawing the Grant Deed, and the charges for recording the Grant Deed. Clearing of all existing encumbrances, judgments, or liens, including any fees or charges incurred, shall be the sole responsibility of Seller.

1.10 Termination and Cancellation of Escrow. If Escrow fails to close as provided above, any party who then shall have fully complied with their instructions and met their conditions to Close of Escrow may, in writing, demand of Escrow Holder the return of their money, documents, instruments, or property deposited into escrow. If no party has so complied, no demand for return of any money, documents, instruments, or property will be recognized by Escrow Holder until five (5) business days after Escrow Holder has mailed written notice of such demand to all other parties at their respective addresses shown in these instructions, and if any party raises any objection to such return, Escrow Holder is

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authorized to hold all such money, documents, instruments, or property until instructed by a court of competent jurisdiction or joint instruction of the parties.

- 1.11 Brokerage Commissions. Seller represents to Buyer that no third party is owed any payment or commission as a result of the transfer of the property interests provided hereunder, and Seller indemnifies and holds the Buyer harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims of fees or commissions.
- 1.12 Hazardous Substances Disclosure. The Property, and Seller's undivided interest therein, are subject to a disclosure as designated under Section 25359.7 of the California Health & Safety Code (as may be amended); whereby a Seller is required to disclose the presence of any hazardous substances that have come to be located on or beneath the Property before Close of Escrow. It is understood and agreed between Buyer and Seller that closing of this Escrow is subject to and contingent upon receipt and approval of said Disclosure Statement by Buyer, and that Buyer may, in its sole discretion, cancel this Escrow as a result of the information provided by Seller to Buyer concerning Contamination on the Property, without any further liability of Buyer to Seller. Review and approval of the Disclosure Statement shall not be unreasonably withheld or delayed by Buyer.
- 1.13 Contamination Defined. The term "Contamination" as used in this Agreement shall mean and refer to any environmental contamination of any type or nature including but not limited to the following substances, whether in the soil, air, surface water, perched water or groundwater, or in any other medium: any "hazardous substance", as defined under Title 42 U.S.C. Section 9601(14) or under California Health & Safety Code Section 25281(g); any "hazardous waste", as defined under Title 42 U.S.C. Section 6903(5) and under California Health & Safety Code Section 25117; any "hazardous substance", as defined under California Health & Safety Code Section 25281 and 25316; any "hazardous material", as defined under California Health & Safety Code Section 25260(e); any chemical listed pursuant to California Health & Safety Code Section 25249.8; any petroleum hydrocarbon material or petroleum byproduct, refined and unrefined, including but limited to any crude oil or any fraction thereof, and any additive to any refined petroleum product, as well as any asbestos or asbestos containing material.
- 1.14 Buyer Reservation of Rights. Buyer expressly reserves all rights and remedies under the law against Seller and any prior owner, operator or other responsible party to seek damages, injunctive relief or other remedies in connection with any investigation, remediation, or other obligations Buyer incurs or may incur as a result of Contamination (other than the levels of contamination currently known by Buyer to exist on or in the Property) potentially existing on, in, or under the Property, including but not limited to any action under CERCLA (42 U.S.C. § 9601, et seq.), the California Hazardous Substance Account Act (California Health & Safety Code § 25300, et seq.), the Hazardous Waste Control Law (California Health & Safety Code §* 25100, et seq.), the Porter-Cologne Act (California Water Code § 13000, et seq.), California Health & Safety

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Code § 25280, et seq. and 33459 et seq., California Civil Code § 850, et seq., California Civil Code § 3479 and 3480, et seq. and other common laws of the State.

- 1.15 Disclosure of Test Results on Contamination to Buyer. Seller shall disclose any and all laboratory results, test results and any and all other information concerning the assessment, investigation, monitoring, removal and/or remediation of Contamination on or from the Property to Buyer, in writing, within two (2) days of his or her receipt of such information. The disclosure of this information is in accordance with and a part of the disclosure obligations of said Seller under the above Section 1.12, the Hazardous Substances Disclosure obligation.
- 1.16 Buyer's Written Purchase Offer. To the extent not inconsistent herewith, the terms of Buyer's written purchase offer to Seller, dated August 10th, 2005, are incorporated herein by reference into this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

- 2.1 Repayment of Purchase Price Deposit to Buyer. In the event Escrow does not close, for whatever reason, and Buyer does not acquire Seller's undivided interest in the Property as provided for in this Agreement, any and all amounts deposited into Escrow as the Purchase Price by Buyer and all other amounts deposited into Escrow by Buyer shall be returned by Escrow Holder, less costs incurred by Escrow Holder, to Buyer.
- 2.2 Possession. Possession of the Property shall be delivered to Buyer at Close of Escrow. Pending Close of escrow, Seller grants to buyer and Buyer's Contractor a right of entry on the Property, for the purposes of coming onto such Property and effectuating the construction of the public right of way improvements, utilities, and other improvements contemplated thereon as part of Buyer's implementation of its public improvement project.
- 2.3 Acquisition Using Powers of Eminent Domain. In the event Escrow does not close, for whatever reason, and Buyer does not acquire Seller's undivided interest in the Property as provided for in this Agreement, Buyer may proceed with acquisition of the Property through condemnation using its powers of eminent domain. It is understood and agreed by Buyer and Seller that the total just compensation, as identified in the condemnation documents, is the Purchase Price set forth under the above Section 1.3(a), the Purchase Price, In addition, Seller specifically waives any rights to challenge the Buyer's right and necessity for the Property required for the public improvement project.

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ARTICLE III

MISCELLANEOUS

- 3.1 Attorney's Fees. In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall not be entitled to recover from the other party its reasonable attorney's fees. Each party shall bear its own attorney's fees.
- 3.2 Notices. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and may be given by personal delivery or by mailing the same by registered or certified mail, return receipt requested, postage prepaid, to the party to whom the notice is directed at the address of such party hereinafter set forth, or such other address and to such other persons as the parties may hereafter designate:

To Buyer: Steven Holtz, Real Estate Services Manager
Economic Development Department
City of Huntington Beach
2000 Main Street
P.O. Box 190
Huntington Beach, CA 92648

To Seller:

Esther Contreras
PO Box 9724
Moreno Valley, CA 92552

DUP Beatrice Goss
PO Box 2427
Julian - CA 92036

To Escrow Holder:

Any notice given by mail shall be deemed received forty-eight (48) hours after such notice is deposited in the United States mail, addressed as provided above, with postage fully prepaid.

- 3.3 Interpretation: Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared equally by all parties hereto. This Agreement shall be

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construed in accordance with the laws of the State of California in- effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Orange County, California. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

- 3.4 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, agreements restrictions or conditions hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof
- 3.5 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.
- 3.6 Severability. If any term, provision, condition or covenant of this Agreement or application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall be valid and enforceable to the fullest extent permitted by law.
- 3.7 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.
- 3.8 Covenants to Survive Escrow. The covenants and agreements contained herein shall survive the Close of Escrow and shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.
- 3.9 I.R.S. Form "W-9". It is further understood and agreed by Seller that closing of this Escrow is subject to and contingent upon Seller executing an Internal Revenue Service Form W-91 1 and 1099-S Form, and depositing same with Escrow Holder no later than one (1) day prior to the Close of escrow.
- 3.10 Notice of Tax Withholding Requirements. It is further understood and agreed by Buyer and Seller that closing of this Escrow is subject to and contingent upon Seller executing a "Transferor's Affidavit of Non-Foreign Status" and California Form 590 (Withholding Exemption Certificate) and depositing a copy of same with Escrow Holder no later than

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one (1) day prior to the Close of Escrow. In the event Sellers cannot execute the above-referenced Transferor's Affidavit or California Form 590, Seller shall provide written instructions to Buyer.

- 3.11 Counterparts. This Agreement and any modifications, amendments, or supplements thereto may be executed in counterparts and shall be valid and binding as if the signatures of all parties were on one document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Real Property and Escrow Instructions on _____, 2005.

"SELLER"

Esther Contreras
Esther Contreras, Trustee

"BUYER"

CITY OF HUNTINGTON BEACH,
A California municipal corporation

Mayor

City Clerk

APPROVED AS TO FORM:

P. Del 10/25/05
City Attorney
for J. 10/13/05
P. 10/13/05

REVIEWED AND APPROVED:

Penelope Gullerud
City Administrator

INITIATED AND APPROVED:

Shirley J. [Signature]
Director of Economic Development

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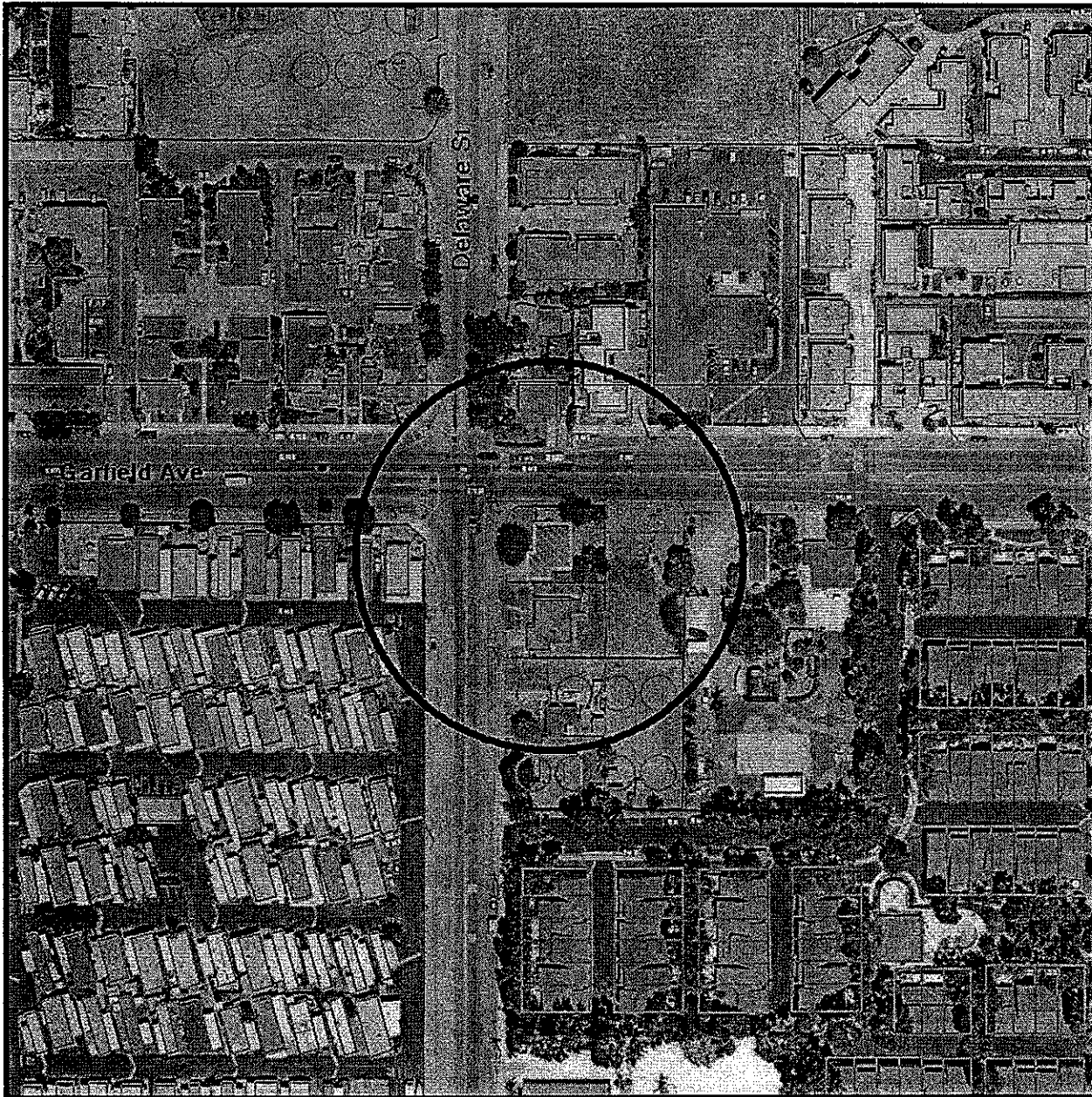
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Site Map

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ATTACHMENT #2

Site Map
19002 Delaware Street



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